IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6336 OF 2005

Nathiram Rambhau Khalpe & ors. .... Petitioner

versus

Sudhakar Sambhaji Kadam & ors. ... Respondents.

Shri N.C. Walimbe for the petitioner.
S.N. Chandrachud for Respondents.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 06, 2006.

P.C:

1. Heard the learned advocates for both the sides.

Perused the records.

2. The petitioner has preferred this petition against the judgment and order passed by 3rd Ad-hoc Addl. District Judge, Pune dated 26-7-2005 allowing the appeal and setting aside the judgment and decree passed by the trial court and consequently the regular Civil Suit No.849/96 came to be decreed and the present petitioner was directed to hand over the vacant possession of the suit premises within a period of two months from the date of the said decree. The decree came to be passed on two grounds namely:

i) Permanent construction made by the present petitioner in the suit premises is without permission of the landlord and

ii) acquisition of suitable alternative accommodation by the petitioner tenants elsewhere.

3. The respondent /plaintiffs filed the suit against the present petitioner alleging that one Tambhau Namdeo Khatpe and Laxman Namdeo Khatpe were the original tenants and after their demise defendants are the tenants in the suit premises paying agreed rent at the rate of Rs. 8/- per month + 1.40 excess tax and defendants have been in arrears of rent from 1st July 1991. It was alleged that by digging ditches in floor and fixing beam in the walls of the suit premises, the defendants erected potmala admeasuring 9 x 7 feet and also another potmala which was initially erected 5 x 6 feet and then was increased to 9 ft. 5 inch into 9 ft. 3 inch in the rear side room and thereby made construction of permanent nature damaging the suit property. It was further alleged that the defendants have acquired suitable alternate accommodation at Vadgaon Dhayari, Jadhavnagar and 77 Dhankawadi at Aherwada, consisting of two rooms and were using the said premises and therefore they were not in need of

the suit premises. The respondent/plaintiffs also made several other allegations against the petitioners.

4. The trial Judge adjudicated the dispute on merit and came to the conclusion that the plaintiff had failed to establish all the grounds and as such dismissed the suit on those grounds but decreed payment of arrears of rent for three years and disposed of the suit accordingly.

5. An appeal was preferred by the petitioner in the District court, Pune and the learned Addl.District Judge, after hearing both the parties deferred with the view taken by the trial Judge and came to the conclusion that it was established by the plaintiff that the defendants have made construction of permanent nature in the suit premises and also have acquired alternative suitable accommodation elsewhere and on such grounds the suit was decreed for eviction.

6. At the outset it may be noted that so far as the question of construction of permanent nature in the suit premises without permission of the plaintiff is concerned, it is the case of the respondent landlord, that the measuring floor in both the rooms of the suit premises have been erected and the rear room of the suit premises is not only constructed but has also

extended by the defendant. Evidently there is no permission given by the landlord for erection of measuring floor. It appears that it was the defence of the defendant that the measuring floor was extended on the instruction of the predecessor of the defendants in the suit premises. However, this aspect is silent in the pleading of the defendants and in the written statement having clearly admitted that there was no measuring floor in the rear side room at all. If it was so, the evidence on record is quite contrary to that position.

7. The Court Commissioner was appointed in respect of the suit premises and his culminative report shows the presence of measuring floor in front as well as rear side room. It was urged on behalf of the petitioner that basically there is no evidence to establish this allegation. However, it is pertinent to note that evidence on record was sufficient to show that the earlier 5/6 ft. measuring floor was increased by the defendants to 9.5 x 9.3 ft. and this contention is substantiated by the Court Commissioner's report which shows extension of such measuring floor in the rear side room. Therefore the allegations made by the plaintiffs are held to be proved on record.

8. The learned Appellate Court Judge has observed that

said measuring floor appears to be constructed in such a way that it was practically created one more floor. Even from the commissioner's Report Exh.38 it is clear that 3 poles are embodied by cement upto one and half inch and other three are inserted in the floor itself. It was also mentioned that two beams are fixed by cement patches. and therefore there is no doubt whatsoever that the construction has made on permanent nature and obviously without permission of the landlord.

9. Similarly it is quite evident that alternative suitable accommodation is obtained by the defendant not only at Vadgaon but also at Dhankawadi. It is true that at Dhankawadi defendants 1 and 2 are said to be residing. However the bailiff visited the said premises and found it locked and the summons was returned. Apart from this aspect that they have obtained the premises at Vadgaon, is not only admitted but is also proved on record. The lower appellate court has come to the conclusion that the defendants have acquired the suitable alternative accommodation at Dhankawadi as well as Vadgaon on the basis of available evidence, which in my view, is sufficient to show that the relevant issue is properly held to be proved.

10. In the result I do not see any merits in the

petition as the reasoning adopted and the finding recorded by the lower appellate court appears to be just legal and proper and there is no need for interference. In the result, the petition stands dismissed with no order as to costs,.

11. At this stage the learned counsel for the petitioner sought time to vacate the suit premises. Considering the facts and circumstances, the petitioners are given time of six months to vacate the premises from the date of this order on the following conditions:

a) That the petitioners and all added members of their family shall furnish the undertaking to this court in that regard;

b) No third party interest shall be created in the said suit premises during the aforesaid time;

c) Petitioner shall not claim any further extension of time to vacate the suit premises.

d) The undertaking to be furnished within four weeks from the date of this order.

....